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Parents ask Supreme Court to decide if they can take son's fatal-shooting case to trial

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Three years after their mentally ill and suicidal son was fatally shot by a Garland police officer, the teenager's parents have not given up on getting their day in court.

Ruddy Elizondo's parents say police used excessive force, violating their son's civil rights, and have asked the U.S. Supreme Court to allow them to take their case against the city of Garland to trial. Lower courts have dismissed the case.

Advocacy groups point to the shooting as more evidence that law enforcement needs better training in dealing with the mentally ill.

Garland City Attorney Brad Neighbor says no day in court is necessary because no constitutional rights were violated and "all of our officers have mental-health training."

"What the plaintiffs really want here is an opportunity to second-guess an officer on scene, second-guess in the sense of sitting in the quiet of one's office or whatever. ... 'Well, he should have done this, should have done that,'" Neighbor said. "And that's not what the law is."

Under the law, force is not considered excessive if an officer feels his life or that of a third party is in danger.

But attorneys for Jose and Alicia Elizondo say some courts give more weight than others to the "totality of the circumstances," including what an officer did in the moments leading up to the deadly confrontation.

The chances of the high court accepting the petition are slim because of the huge volume of cases submitted each session. Still, some court observers say the case is worth watching because of the issues it raises.

The tragedy that spawned the case occurred in March 2009 when the Elizondos called 911 because 17-year-old Ruddy, who had been hospitalized previously for attempting suicide, was holding a steak knife to his abdomen. A police officer, who had been told the teen had already hurt himself, found an uninjured Ruddy in his bedroom. He ordered the boy several times to drop the blade. Ruddy refused and tried to close the door, but the officer stopped him.

Ruddy cursed and told the officer to "shoot me." The officer told Ruddy he didn't want to hurt him but would have to if the boy came any closer. When Ruddy advanced, knife in hand, the officer fired three times.

"He shot Ruddy dead in less than a minute of being there," said Geoff Henley, one of the family's attorneys. "This was not a protracted engagement."

Henley and lawyer Martin Siegel of Houston, who encouraged the Elizondos to take the fight to the Supreme Court, say in their petition that the officer "needlessly escalated the confrontation and provoked their obviously disturbed son, making the shooting inevitable."

The officer has been dropped from the suit for technical reasons, Siegel said, but the family wants to sue the city "because it didn't provide proper training and they failed to employ what's increasingly common in police departments all over the country now, which are called 'crisis intervention teams.'"

Crisis intervention teams work with mental-health professionals, advocates and family members to train officers responding to calls involving mentally ill people.

In a concurring opinion, 5th U.S. Circuit Court of Appeals Judge Harold R. DeMoss Jr. criticized the Garland Police Department training. "There must be effective ways for police officers to resolve volatile situations that avoid threatening or using deadly force," he wrote.

The issue, Siegel said, is what kind of police conduct is taken into account when deciding whether the use of force is excessive.

"The 5th Circuit and some other courts have held if an officer reasonably feels threatened, at the very last moment before the officer acts to defend himself, that's sufficient and force is reasonable," he said.

"But some other circuit courts have held that if the officer is the one whose actions create the need for him to use force, then they take those actions into account if they were reckless."

Siegel hopes the differences between lower courts will persuade the Supreme Court to take the case.

SMU law professor Meghan Ryan says a split among lower courts isn't clear.

The 5th Circuit decision acknowledges that the "totality of circumstances" must be considered but nonetheless agreed that "use of deadly force was not clearly unreasonable" in the Elizondo confrontation.

"There could be an issue to be decided," Ryan said, but "I'm not sure that this is the right case to do it."

John Firman, director of research for the International Association of Chiefs of Police, said law enforcement officials are aware of the challenges of dealing with the mentally ill.

The organization held a summit on the issue two years ago and issued a report, offering specific guidelines.

"The IACP has profound respect for the U.S. Supreme Court, and we will take guidance from them at all times,"

Firman said. But "this information is already out there."